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Extrajudicial, summary or arbitrary executions

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with Assembly resolution 69/182.

* A/71/150.

** The present document was submitted late to allow comments from a final round of consultations to be incorporated.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

In the present report, the outgoing Special Rapporteur, Christof Heyns, provides an overview of his activities since the submission of his previous report, and offers a review of some of the subjects considered over the six years of his mandate.

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I. Introduction

1. The outgoing mandate holder, Christof Heyns, held the position of Special Rapporteur from 1 August 2010 to 31 July 2016. In the present report — his last to the General Assembly — he provides an update on some of the areas covered during that period, and comments on some of the current issues in the area of the right to life. The report begins with an overview of the activities of the Special Rapporteur since the submission of his previous report to the General Assembly (A/70/304).

II. Activities of the Special Rapporteur

2. The activities carried out by the Special Rapporteur from 14 July 2015 to 14 April 2016 are outlined in his report to the Human Rights Council at its thirty-second session (A/HRC/32/39). In the thematic section of that report, the Special Rapporteur focused on the use of force by private security providers in law enforcement contexts.

A. International and national meetings

3. From 3 to 4 May 2016, the Special Rapporteur participated in the third Glion Human Rights Dialogue, entitled "Human rights implementation and compliance: turning international norms into local reality", hosted by the Governments of Norway and Switzerland, and held in Glion, Switzerland.

4. From 11 to 13 May, he co-chaired the Expert Seminar on the Right to Life, in collaboration with the Geneva Academy of International Humanitarian Law and Human Rights and the Institute for International and Comparative Law in Africa of the University of Pretoria, held in Geneva.

5. On 1 June, he was the keynote speaker at the Human Rights Awards Dinner, held by the Advocates for Human Rights in Minneapolis, United States of America.

6. From 6 to 10 June, he participated in the twenty-third annual meeting of special procedures mandate holders, held in Geneva.

7. On 20 June, he presented his final annual report (A/HRC/32/39) to the Human Rights Council at its thirty-second session.

8. On 20 June, he organized and moderated a side event on "Private security: Precaution and accountability for the use of force" in Geneva.

9. On 20 June, he participated in a side event on "The human rights situation in Ukraine two years after Euromaidan: a view from civil society" organized by The Human Rights House Foundation in Geneva.

10. On 21 June, he held a press conference in Geneva, to present his annual report to the Human Rights Council.

11. From 11 to 29 July he presented a seminar on the right to life in the Master's in International Human Rights Law programme of the University of Oxford.

B. Visits

12. The Special Rapporteur visited Honduras from 23 to 27 May 2016. His report on that country visit will be submitted to the thirty-fifth session of the Human Rights Council.

13. From 13 to 17 June 2016, the Special Rapporteur visited Burundi as a member and chair of the United Nations Independent Investigation on Burundi, pursuant to Human Rights Council resolution S-24/1, adopted on 17 December 2015.

14. Since his previous report to the General Assembly, the Special Rapporteur has sent requests for visits to the Governments of Burundi, Israel, Mozambique and the State of Palestine. The Special Rapporteur thanks the Governments of Burundi, Iraq, Honduras, Mozambique, Nigeria and the State of Palestine, which have responded positively to his requests, and encourages the Governments of Egypt, Eritrea, the Islamic Republic of Iran, Israel, Pakistan, Rwanda and Sri Lanka to accept his pending requests for visits.

III. Overview

15. When the Special Rapporteur presented his final report to the Human Rights Council in June 2016, he was asked by several States to reflect upon his tenure and the role of the mandate holder. In the present report he takes stock of and provides updates on some of the issues he addressed and focuses on some of the challenges and opportunities in the areas covered by the mandate.[1]

16. Holding the mandate provides a singular opportunity to engage with the development of international law at the cutting edge, but also to try to make a direct difference to the lives of people. The Special Rapporteur wants to express his heartfelt gratitude for having been given this opportunity and to thank those who have worked with him.[2]

A. Scope and subjects

17. The normative core of the mandate — made clear through the various resolutions and practice of the General Assembly and the Human Rights Council (most recently in Assembly resolution 69/182 and Human Rights Council resolution 26/12), and through the thematic prioritics of previous mandate holders — is to be found in the right to life, as articulated for example in article 6 of the International Covenant on Civil and Political Rights. The mandate was originally directed primarily at political killings.[3] However, it has since then been interpreted to cover a

[1] See www.ohchr.org/EN/Issues/Executions/Pages/SRExecutionsIndex.aspx and www.icla.up.ac.za/un.

[2] This includes a wide range of people in the Office of the United Nations High Commissioner for Human Rights (OHCHR). Outside the office the Rapporteur wants to thank in particular Thomas Probert, Stu Maslen and Sarah Knuckey. He is grateful to the University of Pretoria for providing an enabling institutional base.

[3] See resolution 35/172 on arbitrary or summary executions, in which the General Assembly was concerned at the occurrence of executions which are widely regarded as being politically motivated.

much wider range of deprivations of life (see E/CN.4/2002/74, para. 8). The central concern of the mandate remains "executions": the use of lethal force by one human being against another.

18. The right not to be arbitrarily deprived of life is a foundational and universally recognized right, applicable at all times and in all circumstances. It has been called the "supreme right".[4]

19. There are two dimensions of the right to life: prevention (the substantive) and accountability (the procedural). States must prevent the "arbitrary" deprivation of life, including through an appropriate framework of laws. States must respect the right to life by ensuring that their organs and agents, and others whose conduct can be attributed to the State, do not deprive any person of life arbitrarily. They must also protect and fulfil the right to life by exercising due diligence to prevent arbitrary deprivations of life by private actors, as well as take reasonable measures to address conditions that may give rise to direct threats to life, including those caused by pollution or resulting from natural causes.[5] The right to life is not an absolute right, but it can be limited only under circumstances that are narrowly defined by international human rights law.

20. The accountability component of the right to life requires that States must investigate potentially unlawful deaths, assign responsibility and remedy violations. An emphasis on the accountability component was a central preoccupation during the tenure of the outgoing Special Rapporteur. This stemmed partly from the view that what distinguishes all human rights from mere aspirations is that violations of human rights are met with consequences, in the form of accountability. Moreover, the certainty of effective accountability is an important component of deterrence. This emphasis found its most concrete expression in the updating of the Manual on the Effective Prevention and Investigation of Extra-legal, Summary or Arbitrary Executions (the Minnesota Protocol), discussed below.

21. A further element of the Special Rapporteur's approach was to emphasize that the right to life is not merely a right to continued physical existence, or "bare life",[6] but rather that what is protected is dignified life. This found expression in particular in his work on autonomous weapons, discussed below.

22. The Special Rapporteur has also described what he has called the "protect life" principle as an important lodestar for the international protection of the right to life and thus for the mandate. As a general rule, the deprivation of life cannot be justified on any other basis than that it is required to save life. This is a minimum requirement and applies in particular to the intentional deprivation of life. Limitations on the right to life cannot be justified on the grounds that they are required in order to pursue objectives such as asserting the authority of the State, protecting property or imposing moral or religious values.

23. The mandate is focused on the protection of the right to life, and not on violence reduction in general. At the same time, it is clear that one way to protect life is through evidence-based programmes aimed at violence reduction. The Special

[4] Human Rights Committee, general comment No. 6 (1982) on article 6 (Right to Life), para. 1.

[5] See, for example, European Court of Human Rights, *Öneryıldız v. Turkey*, application No. 48939/99, (Grand Chamber) judgement of 30 November 2004.

[6] Giorgio Agamben *Homo Sacer: Sovereign Power and Bare Life* (Stanford, Stanford University Press, 1998).

Rapporteur has emphasized the need for all players to take note of the emergence of a body of scholarship contending that there has been a significant reduction in interpersonal violence over the last several centuries in the world as whole.[7] This suggests that violence is not as endemic or as intractable as it is often presented, and creative new steps can and must be found to protect the right to life, including through technology.

B. Working methods

24. The main working methods of the Special Rapporteur remain thematic reports, country visits and communication with States.

25. During his tenure the Special Rapporteur presented thematic reports on the following issues:[8] the death penalty (A/67/275, A/69/265 and A/70/304); remotely piloted aircraft or "armed drones" (A/68/382 and A/HRC/26/36) autonomous weapons (A/HRC/23/47, A/HRC/26/36 and A/69/265); the protection of the right to life during law enforcement operations (A/66/330, A/HRC/17/28, A/HRC/26/36, A/HRC/17/28 and A/69/265), including the use of force by private security providers in that context (A/HRC/32/39); the protection of journalists (A/HRC/20/22), the role of forensic investigations (A/70/304) and information and communications technologies (A/HRC/29/37); the role of regional human rights systems (A/69/265) and the use of statistical indicators (A/69/265).

26. He visited the following countries: India (see A/HRC/23/47/Add.1), Turkey (see A/HRC/23/47/Add.2), Mexico (see A/HRC/26/36/Add.1), the Gambia (see A/HRC/29/37/Add.2), Papua New Guinea (see A/HRC/29/37/Add.1), Ukraine (see A/HRC/32/39/Add.1), and Honduras (report to be presented at the thirty-fifth session of the Council). As part of the United Nations Independent Investigation on Burundi he also conducted two visits to Burundi.

27. He authored or co-authored 753 communications to States. In 47 per cent of cases, some form of State response (ranging from mere acknowledgements of receipt to substantive comments) was received.[9]

28. As will be highlighted below, the Special Rapporteur had a strong focus on working with the established and emerging regional human rights mechanisms. This was done especially in the context of the broader initiative of the United Nations special procedures of the Human Rights Council to work with the African Commission on Human and People's Rights, in terms of the Addis Ababa road map.[10] The Special Rapporteur chaired the joint working group associated with that

[7] See, for example, Steven Pinker, *The Better Angels of Our Nature: The Decline of Violence in History and its Causes* (London, Allen Lane, 2011); and Manuel Eisner "Long-Term Historical Trends in Violent Crime" *Crime and Justice: A Review of Research, vol. 30* (2003).

[8] Preliminary discussion papers were often presented to expert gatherings before finalizing thematic reports (sometimes jointly with other rapporteurs). This allowed broad input into the reports.

[9] A full analysis can be found in the Rapporteur's annual communications report (most recently, A/HRC/32/39/Add.3).

[10] See OHCHR, "Dialogue between special procedures mandate-holders of the United Nations Human Rights Council and the African Commission on Human and Peoples' Rights: road map", January 2012. Available from www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf.

initiative. He also submitted amicus curiae briefs in several cases at the domestic and regional (African and Inter-American) levels.

C. Recent developments in the normative environment of the right to life

29. Several recent developments have shaped and will continue to shape the global understanding of the right to life and thus the mandate. The Special Rapporteur is glad to have been able to contribute to a number of them in one way or another.

30. The Human Rights Committee is developing a new general comment on the right to life. The Committee's general comment No. 6 on article 6 (right to life) (1982) was written in the early 1980s, and the new draft text considerably expands upon it, bringing it up to date with the subsequent jurisprudence of the Committee.[11]

31. The Special Rapporteur, in collaboration with the Office of the United Nations High Commissioner for Human Rights, initiated an expert process in 2014 to update the Minnesota Protocol. This is in essence a restatement and consolidation of the standards applicable to the investigation of all potentially unlawful deaths — the procedural component of the right to life mentioned above.

32. A number of bodies are involved in exploring whether new laws are needed in the context of the use of armed drones and autonomous weapons, during armed conflict as well as law enforcement operations.[12]

33. In 2014 the Human Rights Council commissioned a study on the proper management of assemblies (see Council resolution 25/38). The outcome of that study (A/HRC/31/66) was presented to the Council in March 2016.

34. The United Nations Office on Drugs and Crime (UNODC) and the United Nations High Commissioner for Human Rights are developing a handbook on Use of Force and Firearms in Law Enforcement (expected in late 2016).

35. The inclusion of the aim to significantly reduce all forms of violence in the world as target 1 of Goal 16 of the Sustainable Development Goals will focus attention on the ability of States to address violence across societies.

36. The most prominent regional engagement with the issue was when the African Commission on Human and Peoples' Rights adopted its general comment No. 3 on the African Charter on Human and Peoples' Rights: the right to life in November 2015.[13]

37. The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe recently produced a Human Rights

[11] A description of the process of consultation is available from www.ohchr.org/EN/HRBodies/CCPR/Pages/GC36-Article6Righttolife.aspx.

[12] The issue of autonomous weapons has been taken up inter alia by the States parties to the Convention on Certain Conventional Weapons and will be considered again during their meeting in December 2016. See also International Committee of the Red Cross (ICRC), "Autonomous weapons: decisions to kill and destroy are a human responsibility", 11 April 2016. Available from https://www.icrc.org/en/document/statement-icrc-lethal-autonomous-weapons-systems.

[13] African Commission on Human and Peoples' Rights, *General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4)* (Pretoria University Law Press, 2015).

Handbook on Policing Assemblies.[14] The Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations (ASEAN) has decided to embark on a study on the right to life.

IV. Thematic issues

A. Progressive abolition of the death penalty

38. The death penalty falls within the scope of the Special Rapporteur's mandate because the imposition of the death penalty in violation of international law standards constitutes an arbitrary deprivation of life.

39. Article 6 (2) of the International Covenant on Civil and Political Rights, by requiring that States that still apply the death penalty do so only for the most serious crimes, has long been understood to provide a foothold for the death penalty in extreme cases. That foothold, however, has shrunk over the years. The category of most serious crimes is now understood to cover at most intentional killing — murder (see A/67/275, para. 35). The Special Rapporteur has promoted the view that it is no longer tenable to describe international law as "retentionist", but instead that it requires the progressive abolition of the death penalty.[15]

40. Moreover, there is a growing view that the death penalty constitutes torture, cruel or inhuman treatment (prohibited in article 7 of the International Covenant on Civil and Political Rights) and violates the right to dignity (see A/67/279, para. 36). Article 6 (6) of the Covenant provides that nothing in article 6 shall be invoked to delay or to prevent the abolition of capital punishment by any State Party. The fact that the death penalty may have a foothold in article 6 (2), dealing with the right to life, may thus not serve as an argument against the contention that it constitutes a violation of those other rights.

41. The practice of the vast majority of States has been to move away from the death penalty, if not in law (although more than half have done so), then at least in practice (80 per cent have now abolished it in law or in practice). Whereas retentionist States could in the past have argued that there was strong State practice to justify the use of the death penalty as a limitation on the right to life, that argument has largely lost its force. It should be noted that three States alone were responsible for 89 per cent of the executions documented in 2015 (excluding China, from which reliable figures are not available).

42. The Special Rapporteur is of the view that the point has been reached where the death penalty can no longer be regarded as compatible with the prohibition of cruel, inhuman or degrading treatment. Even if that is not yet the case, authorities with decision-making power concerning the death penalty should recognize that the world is moving in that direction, requiring at least the progressive abolition of the death penalty. That was the approach followed by the African Commission on Human and Peoples' Rights in its recent general comment on the right to life.

[14] Organization for Security and Cooperation in Europe, *Human Rights Handbook on Policing Assemblies* (Warsaw, 2016).

[15] See Christof Heyns and Thomas Probert "The right to life and the progressive abolition of the death penalty" in *Moving Away From the Death Penalty: Argument, Trends and Perspectives* (United Nations publication, Sales No. E.15.XIV.6).

43. International law already allows only very limited space for the death penalty, prohibiting, for example, mandatory death sentences or the imposition of the death penalty on children. Ensuring that the legal system complies with all the relevant safeguards should not be incremental: that is an immediate obligation. However, at least incremental steps to further reduce the scope of the application of the death penalty are required. This would be the case, for example, where a State executes fewer people every year; reduces the number of "most serious" crimes for which the death penalty may be imposed; or implements a moratorium.

1. Resumptions

44. Against the backdrop of the progressively abolitionist logic of international human rights law, any resumption of the death penalty, or enlargement of its very narrow scope, is an issue of great concern (see A/69/265). Once they have abolished the death penalty, States are foreclosed by article 6 of the International Covenant on Civil and Political Rights from reinstating it. Article 6 provides the narrow foothold for the death penalty described above only for those States that have not abolished such punishment. Once a State has abolished the death penalty it no longer falls into that category (see CCPR/C/78/D/829/1998, para. 10.4).

45. In its general comment No. 6 (1982), the Human Rights Committee noted that all measures of abolition should be considered as progress in the enjoyment of the right to life. By implication, conversely, any resumption of executions or any measure increasing the use of the death penalty, leads to lesser protection of the right to life.

2. Drug crimes

46. Where the death penalty remains, it is vital that it be imposed only for the "most serious" crimes. The Human Rights Committee has repeatedly made clear that drug offences do not meet this threshold.

47. It is an issue of great concern that a small number of States choose persistently and openly to flout this widely acknowledged international standard. Thirty States around the world still have legal provisions providing for the death penalty for drug-related crimes. However, this theoretical possibility cannot serve as State practice justifying actual executions for drug-related offences in the much smaller number of States where they still take place. Likewise, nor does the large number of individual executions in the world for drug-related offences — estimated to be as many as 1,000 in certain years — translate into evidence of widespread State practice. Only a very small number of States — which is the relevant point of reference if State practice is to be established — undertake such executions.[16]

48. Technical assistance provided by States in combating drug crime, whether directly or via a multilateral agency such as UNODC, must begin with the assertion that the imposition of the death penalty for drug offences is a flagrant violation of international law.

[16] Patrick Gallahue and Rick Lines, *The Death Penalty for Drug Offences: Global Overview 2015* (London, International Harm Reduction Association, 2015).

3. Transparency

49. Transparency, or the public availability of information, is an underappreciated, yet crucial, aspect of securing the right to life under international law. In some States (such as Belarus, China and Viet Nam), information about the death penalty is a State secret; in others only very limited information is made available, often when it is too late. The coherence and integrity of the international human rights system is challenged when there are black holes in respect of which no information is available on the taking of lives (see A/HRC/30/18, para. 58).

B. Use of force in law enforcement

50. Every individual may use force to protect themselves or another person from threat of death or injury, and the State, in addition, has the obligation through its law enforcement officials to protect individuals and the general public from unlawful acts of violence. Law enforcement officials, more than ordinary members of the public, are thus entitled and indeed sometimes required to use force, but they must always do so in strict compliance with the applicable international standards. In the context of law enforcement, the requirements of necessity, proportionality and precaution are of particular importance.

51. The intentional lethal use of force by law enforcement officials and others is permissible in very exceptional cases only, namely when its use against a perpetrator is strictly unavoidable in order to protect human life from unlawful attack (making it proportionate) and all other means are insufficient to achieve that objective (making it necessary). The evaluation of necessity is a factual cause and effect assessment of whether the use of force is actually required to achieve the desired outcome (qualitative necessity) and, if so, how much force is unavoidable for that purpose (quantitative necessity). The requirement of necessity raises the question of whether the threat could not be averted by resort to less harmful means and thus requires a graduated approach to the use of force.

52. The proportionality requirement relates to the question of whether the benefit expected to result from the use of force, that is, neutralizing a threat, justifies the harm likely to be caused by it. While establishing necessity requires a factual cause-and-effect assessment, proportionality entails a value judgment that balances harm and benefit.

53. Given that they are cumulative requirements, proportionality can place a ceiling on the level of force that may be considered necessary and vice versa. For example, it may be "necessary" to shoot a fleeing thief if that is the only way to stop him or her from escaping (entailing an objective cause-and-effect assessment). However, thus injuring the thief would not be "proportionate", because it would amount to an excessively harmful means of stopping a comparatively minor crime (entailing a value judgment).

54. The State's use of potentially lethal force during peacetime must take place within a framework of appropriate planning and training, which must be directed at avoiding or minimizing the risk of loss of life during any law enforcement

operation.[17] It is not enough for a State or its agents to say that they had no choice but to use force if the escalation of that situation could reasonably have been avoided through precautionary measures. The Special Rapporteur has thus promoted the view that precaution should be seen as a separate requirement for the use of force, and in particular lethal force (see A/HRC/26/36, paras. 63-64).

55. Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides as follows:

> Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

56. The construction of the paragraph as a whole suggests that the intentional lethal use of firearms mentioned in the last sentence is permissible only if the danger is "imminent" — with imminence normally measured in seconds rather than hours. The kind of intention at stake here is what is often referred to as direct or indirect intent, but not the mere acceptance of a risk. The mere acceptance of a risk is covered by the first sentence of principle 9, which allows for firearms to be used for the protection of life or against serious injury. Where a grave threat is posed to life, the Basic Principles do not pose the requirement of imminence for firearms to be used, provided there is no (direct or indirect) intention to kill.[18]

1. Assemblies

57. Against the backdrop of the increasing use of demonstrations as a political tool worldwide over recent years and the loss of life during such events, the Special Rapporteur submitted two reports dealing with the management of demonstrations and the protection of the right to life (A/HRC/17/28 and A/HRC/31/66) to the Council. The management of demonstrations must be carried out in a holistic way. A whole range of rights applies to demonstrations, including the rights to peaceful assembly, freedom of expression and rights related to bodily security. These rights are indivisible and need to be protected as a whole for the right to life to be secured. Even if violence occurs during demonstrations, and individual participants have lost the protection of the right to peaceful assembly, the other rights still pertain. There is no such thing as an unprotected assembly.

58. It was set out above that precaution is an independent requirement for the use of force. The reports of the Special Rapporteur have elaborated on some of the precautionary steps necessary for the proper management of demonstrations, which can be one way of reducing the risk of an eventual confrontation.

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[17] See European Court of Human Rights, *McCann and Others v. United Kingdom* (application No. 18984/91, (Grand Chamber) judgment of 27 September 1995, paras. 150, 212 and 213, and *Finogenov and Others v. Russia*, (application Nos. 18299/03 and 27311/03, judgment of 20 December 2011, paras. 207-209 and 266.

[18] This interpretation of imminence clarifies that found in A/HRC/26/36, para. 59.

2. Less-lethal weapons

59. The requirement of necessity provides that, as far as possible, graduated force should be used.[19] In this context, less-lethal weapons may in some cases provide officials with less dangerous options than the use of firearms and thus may save lives. The duty of precaution requires that States equip their law enforcement officials with appropriate less-lethal weapons. However, while less-lethal weapons should, in general, be welcomed, it must be remembered that almost any use of force against the human person can lead to loss of life or serious injury.[20]

60. Just because a weapon is labelled "less-lethal" does not automatically mean that it is appropriate. An increasing number of detailed reports by human rights organizations document how protesters and bystanders have been wounded and sometimes died following the inappropriate use by police or security personnel of rubber-coated metal bullets, the reckless use of tear gas, electric shock projectiles, rubber ball projectiles, plastic bullets and water cannons.[21] As with all equipment used in law enforcement contexts, full training on each separate piece of equipment should be mandatory for any officers who might be called upon to use it.

61. While there is a high level of agreement on the international standards applicable to the use of force during law enforcement, the increasingly advanced technology requires a more detailed regulatory framework. A process involving States and the international community, in addition to civil society, is needed to set out how the standards established by the Basic Principles and other relevant jurisprudence should be applied to the scenarios created by new technology.[22]

3. Private security provision

62. Private security providers play a significant role in law enforcement in many parts of the world. The Special Rapporteur has underlined that the same precautionary principle applied to State law enforcement officials must also apply to private actors: those responsible for the use of force by any entity must ensure that personnel receive proper training, including firearms training if appropriate, but also — importantly — in "less-lethal techniques" (see A/HRC/32/39, para. 79).

63. With respect to the importance of redress and accountability at the domestic level, the Special Rapporteur noted that, given the inherent risks of abuse of rights associated with security work, close attention should be paid to the trigger of liability concerned (ibid., para. 115). It can be argued that private security providers should be held to a modified standard of strict liability, as might be expected from a company handling hazardous waste, for example.

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[19] See A/HRC/26/36, paras. 59, 69, 102 and 139; A/61/311, paras. 33-45; A/HRC/14/24, paras. 33-37; and A/68/382 and Corr.1, paras. 33-37.

[20] See, generally, Abi Dymond and Neil Corney, "The use of 'less lethal' weapons in law enforcement", in Stuart Casey-Maslen, ed., *Weapons Under International Human Rights Law* (Cambridge, Cambridge University Press, 2014).

[21] See Omega Research Foundation and Amnesty International, "*The human rights impact of less lethal weapons and other law enforcement equipment*" (London, 2015), Rohini J. Haar and Vincent Iacopino, "Lethal in disguise: the health consequences of crowd-control weapons" (Physicians for Human Rights and International Network of Civil Liberties Organizations, 2016).

[22] The Special Rapporteur recommended that OHCHR convene a panel to undertake such a process, firstly in A/69/265, para. 88, and then again in the joint report on the management of assemblies, A/HRC/31/66, para. 67 (i).

C. Role of new technology

64. The Special Rapporteur has throughout his mandate examined the increased impact of technological developments on the protection of the right to life. Technology, as a general rule, provides tools that can be used either to take life or to protect life.

1. Unmanned weapons systems

65. Depersonalization of the use of force has been or is being introduced through the two generations of unmanned systems, armed drones and fully autonomous weapons, in armed conflict and in law enforcement.

66. It is important that the Human Rights Council continues to engage with these developments, given their clear right-to-life implications. The mandate of the Council to address the right-to-life implications of weapons and armed conflict is now well established, although the important role of other United Nations bodies should also be recognized. These other bodies do not, however, play the same role with respect to domestic law enforcement, and if the Council does not deal with these weapon systems in that context, there will be a clear protection gap.

Armed drones

67. There is broad agreement that armed drones themselves are not illegal weapons. In many cases, however, they make it easier for States and other actors to use force and may thus present a real risk to the right to life. Legal standards should not be watered down to accommodate drones. Drones should follow the law, not the other way round.

68. It is of particular importance to maintain the distinction between situations of armed conflict and situations of law enforcement. The legal regime applicable to the latter (international human rights law) is more restrictive than that for the former (international human rights law and international humanitarian law). Whether force is used in the context of an armed conflict is a question of fact, and international humanitarian law applies only where the use of force relates to an armed conflict. Where that is not the case, the legality of the use of force against an individual is assessed by human rights law exclusively. International law does not provide that the law of self-defence in inter-State use of force can be a "stand-alone" basis for the use of force against an individual.

69. Deploying a missile from a drone against someone is invariably lethal if it hits the target. As a result, drones should be used in a context where international human rights law is the applicable legal regime (to the exclusion of international humanitarian law) only if it is necessary in order to save lives against a threat that is truly imminent, as required by the last sentence of principle 9 of the Basic Principles (see para. 55 above).

70. The central norms of international law need not, and should not, be abandoned to meet the challenges posed by terrorism. Indeed, the fact that drones make targeted killing so much easier should serve as a prompt to ensure diligent application of existing legal standards.

71. One of the most important ways to guard against the risks posed by drones is transparency about the factual as well as the legal situation pertaining to their use.

Transparency is a necessary step for legal accountability, mitigating abuse and democratic debate and oversight, by the population themselves as well as their representatives. The discrepancies between the figures for drone strikes recently released by the Government of the United States and civil society monitors provides a clear illustration of the uncertainty that exists regarding core facts about the drones programme, rendering proper public and other oversight of and accountability for a singularly intrusive method of using force in many cases impossible.

72. It is widely accepted that, during armed conflict, the meaning of the term "arbitrary" in human rights law is determined with reference to the requirements of international humanitarian law.[23] This approach has recently been called into question, however, with respect to a State which commits an act of aggression. The critical position does not challenge the fact that, in order to enhance the respect for international humanitarian law on all sides of an armed conflict, the privilege of belligerency, which shields a combatant from individual criminal responsibility whenever he or she takes the life of his or her adversary in conformity with the requirements of international humanitarian law, extends to those combatants who fight on the side of an aggressor State. However, it questions the notion that such an aggressor State itself deserves a corresponding privilege with respect to the international human right to life. Instead, it argues that the taking of enemy life by combatants of an aggressor State in the course of an act of aggression should be considered as a violation by that State of the right to life.[24]

73. The use of remote-controlled force in domestic policing, as raised by the Special Rapporteur in 2014 (see A/69/265) — has become a stark reality in recent years, for example when a sniper in Dallas was killed when a bomb was delivered and detonated by radio control.[25]

74. The use of military-style weapons in law enforcement in general should be questioned. Using such weapons implies that the citizens and the population at large are being treated as a threat. Using, for example, automatic firing mode in law enforcement operations does not comply with the requirement that every shot has to be separately justified. Using remote-controlled force during domestic policing, for example during the management of demonstrations, raises particular problems. The police have a duty to protect the public, and by using remote control they distance themselves from the public, and may not be able to fulfil this function.

Autonomous weapons

75. Some of the same concerns that apply to armed drones apply to autonomous weapons — weapon platforms that, once activated, can select and engage targets without further human intervention. However, they also raise additional concerns about the protection of life during war and peace. Because machine learning takes

[23] See International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*: Advisory Opinion of 8 July 1996, paras. 24-25.

[24] The Rapporteur discussed the law dealing with the inter-State use of force as a secondary level of protection of the right to life in 2013 with reference to armed drones (see A/68/382). See, more recently, Frédéric Mégret, "What is the specific evil of aggression?", in: Claus Kreß and Stefan Barriga, eds., *The Crime of Aggression: A Commentary* (Cambridge, Cambridge University Press, forthcoming).

[25] See www.theguardian.com/technology/2016/jul/08/police-bomb-robot-explosive-killed-suspect-dallas?CMP=Share_iOSApp_Other.

place and not all situations in armed conflict can be foreseen, there is an element of unpredictability in the selection of a target and the use of lethal force by autonomous weapons. They raise the question of to what extent such weapon platforms are still tools in the hands of human beings, or, conversely, allow robots to make life and death determinations over human beings.[26]

76. Autonomous weapons raise two distinct questions: can they carry out lawful targeting, and should they be permitted to carry out targeting of human beings?

77. The first question focuses on the interests of those who are protected from targeting — such as uninvolved civilians and those hors de combat. Will autonomous weapons be equipped to make the necessary distinctions, as well as the proportionality judgements required to ensure the protection of the right to life? In the case of advanced autonomy this may be seriously questioned. Moreover, reference was made above to the procedural component of the right to life, namely accountability. If there is a low level of human control, there may be a lack of legal accountability where targeting goes wrong, because accountability is premised on control.

78. There is also the question of whether autonomous weapons should make life-and-death determinations about humans. Here the primary concern is with the rights of those who may otherwise be targeted and are in that sense not protected. In order not to be "arbitrary", a deprivation of life may require a deliberative human decision. Killing by a machine may thus inherently be a violation of the right to life. It may furthermore also be a violation of human dignity, or of the right to a dignified life, if the determination that a human being will be killed is made by a robot, because it reduces the person to being a target (literally to the binary code of computing: the figures of 0s and 1s) and nothing more. Here the question is not legal but moral accountability: on whose conscience does the death of the person targeted lie when the killing is done by an algorithm?

79. In armed conflict there is often not an objectively right or wrong answer about targeting. Moreover, even if that were the case, the individual taking the decision is at most expected to act reasonably under the circumstances, given the available information. Where that turns out to be wrong there is no legal responsibility, but a certain moral responsibility remains, at least to make sure such an error does not occur again in the future. This will be lost if computers make targeting determinations.

80. In many of the discussions on the topic in which the Special Rapporteur has participated, the focus was on the use of autonomous targeting in single, isolated cases. However, what is at stake are rather the potential consequences of the deployment of such weapons over time, and the exponential effect of machine learning and of decreased control by human beings as a collective over decisions over life and death. Deciding to cross the threshold into a world in which this is accepted as standard practice is a momentous and probably irreversible decision.

81. In his report to the Human Rights Council at its twenty-third session (A/HRC/23/47), the Special Rapporteur called for a moratorium on the development of autonomous weapons, until a principled basis could be found to distinguish acceptable and autonomous weapons.

[26] See, generally, Nehal Bhuta and others, eds., *Autonomous Weapons Systems: Law, Ethics, Policy* (Cambridge, Cambridge University Press, 2016).

82. The concept of "meaningful human control" over critical functions (most saliently, the release of force) has subsequently been elaborated in the context, inter alia, of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects to fill this void. The Rapporteur supports the approach that weapons with full autonomy — those without meaningful human control — should be banned. They are unlikely to cross the first hurdle outlined above — the ability to make proper targeting decisions. They should moreover not make life-and-death determinations over human beings, because it would violate the right to a dignified life. The same constraints do not apply to autonomous weapons for which humans retain meaningful control.

83. In December 2016, the decision on how to take forward international work concerning autonomous weapons will again be on the agenda of the States parties to the Convention on the Use of Certain Conventional Weapons. The Rapporteur urges the Human Rights Council (and other human rights bodies) to follow the outcome of the decision closely. In addition, the Council should remain seized of the possible introduction of autonomous weapons in domestic law enforcement operations (see A/69/265, paras. 77-87).

2. Information and communications technologies and fact-finding

84. One advantage that can potentially be realized by the use of more technologically sophisticated weapons, as well as in other, non-weaponized, technological contexts, is the opportunity for greater availability of information and documentation. Drones capture and relay detailed sensory and video information so that remote pilots can fly them and allow accurate targeting. Such information can be very valuable in conducting post-operation assessments.

85. A related development is the emergence of the use of body-worn cameras, in both armed conflict and law enforcement settings, for different reasons. In both cases they have already proved a valuable evidentiary source for accountability for right-to-life violations.

86. More broadly, the emergence of a wide range of potential sources of information, enabled or created by information and communications technologies (ICTs), about violations presents a significant opportunity to human rights practitioners and for investigations concerning right-to-life violations.[27] Having recommended to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in 2015 (see A/HRC/29/37) that it look into increasing its capacity to verify, analyse and act on information generated or received through ICTs, the Special Rapporteur welcomed the engagement of the Office in 2016 with questions of verification and digital safety as the "challenges" of the #DiploHack in Geneva, and looks forward to the implementation of some of the results.

D. Other killings incurring State responsibility

87. In his reports, and in engagements with States both during country visits and in communications, the Special Rapporteur has frequently taken up the issue of

[27] See, generally, Philip Alston and Sarah Knuckey, eds., *The Transformation of Human Rights Fact-Finding* (New York, Oxford University Press, 2016).

killings of individuals who find themselves in a situation of vulnerability either because of their work or because of events around them. The threats they face draw attention to the State's responsibility to protect as well as to respect the right to life, both through urgent preventive measures and, retrospectively, through investigation and accountability that combat a climate of impunity.

88. In most situations, the isolated killing of individuals will constitute a simple crime and not give rise to any State responsibility. Once a pattern becomes clear, however, and where the response of the State is inadequate, its responsibility under international human rights law becomes applicable (see E/CN.4/2005/7, paras. 71-75).

89. In this section, the Special Rapporteur addresses several patterns of killings that can be observed within certain societies. In addition to the general duty to protect, States moreover have a responsibility to protect from violence motivated by discriminatory prejudice, both directly and by taking steps to remedy the prejudice. It is in the sense of this separate responsibility that the State is made more proximate to killings of this nature than it is to ordinary criminal homicide.

90. Reference was made at the outset to the "protect life" principle. Under current-day international law, life may not be taken in order to protect interests other than life: suppressing free expression or political dissent, killing "witches", saving the "family honour", or imposing one's own concept of morality cannot justify the taking of life, and the perpetrators must be held accountable. A failure by the State to address systematic patterns of violence through precautionary measures (which should include education) opens it up to violations of the right to life, as does the absence of accountability measures where such violence does occur. Part of the task of the Special Rapporteur is to point out such patterns, to States and to the international community.

1. Journalists and human rights defenders

91. In 2012, the Special Rapporteur highlighted threats to the safety of journalists, noting the causal correlation between the killing of journalists and impunity for such attacks (see A/HRC/20/22).[28] That report appears to have provided support to the Human Rights Council to adopt a resolution on the safety of journalists later in 2012 (Council resolution 21/12). The following year, the General Assembly adopted a landmark resolution on the issue (Assembly resolution 68/163).

92. However, the increased international attention has not yet significantly impacted on the safety of journalists. In 2015, 73 journalists were killed in circumstances such that the Committee to Protect Journalists has confirmed that the motivation of the attack was their work, or that they were killed in crossfire.[29]

93. Many of the same risks and threats are faced by human rights defenders. Responding to such attacks, in the context of passivity or complicity on the part of law enforcement, is a frequent subject of the communications sent to States.

94. There is not yet a global level study of attacks or killings of human rights defenders similar to the records kept of journalists who are killed, but the numbers

[28] The Committee to Protect Journalists annual Impunity Index further underlines this trend. See https://cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php.

[29] See Committee to Protect Journalists, 73 journalists killed in 2015/motive confirmed database. Available from https://cpj.org/killed/2015/.

from certain national level studies are alarming. In a joint project with the Somos Defensores Programme, OHCHR registered 63 murders of human rights defenders in Colombia in 2015 (41 of which had been verified by the time they reported), a figure which they note as higher than the 20-year average of 33 human rights defenders killed each year (see A/HRC/31/3/Add.2, para. 79).

2. Witchcraft accusations and related violence

95. The killing of individuals, in the majority of cases women and children, for reasons related to various beliefs in witchcraft is a global issue that has been raised several times by the Special Rapporteur (see, for example, A/HRC/11/2 and A/HRC/29/37/Add.1). Responses to suspicions of "witchcraft" frequently involve serious and systematic forms of discrimination, especially on the grounds of gender, age and disability. Such arbitrary and subjective accusations result in very real terror and suffering, felt both by the individual victims and by their families.

96. Legal approaches at the national level vary, with some States still retaining archaic legal proscriptions of witchcraft. But more problematic, from the perspective of the Special Rapporteur, is the extent to which the law can be taken into private hands by mobs or individuals, while law enforcement officials can be reluctant to intervene.

97. In addition to violence against innocent people on the grounds that they are believed to be witches, there is an associated challenge of violence committed against innocent people on account of the belief that their body parts can be used by witchdoctors to create magic, which provides power and/or wealth to the client. This challenge is often manifested in attacks against persons with albinism, but can extend further.

98. States have a responsibility not only to investigate individual cases of such killings, but also, where a pattern is discernible, actively to discourage them, potentially through heightened sentencing, together with community-level advocacy and awareness-raising. It seems a sensible approach to say that, in witchcraft-related cases, the motive should be seen as an aggravating circumstance.

3. "Honour killings"

99. The issue of "honour killings" — the murder of an individual by a member or group of members of the same family or social group, motivated by the perception that the victim has brought dishonour upon the family or community — was raised by one of the Special Rapporteur's predecessors, Asma Jahangir (see E/CN.4/2000/3, paras. 78-84).

100. The perpetrators of such crimes are mostly male family members of the murdered women, who go unpunished or receive reduced sentences on the justification of having murdered to defend their misconceived notion of "family honour". Together with others, the Special Rapporteur can play a role by monitoring incidents of "honour killings" where the State either approves of and supports such acts, or extends a form of impunity to the perpetrators by giving tacit or covert support (ibid., para. 78).

4. Killings on the basis of sexual or gender identity

101. The Special Rapporteur welcomes the increasing attention paid to the issue of violence against persons on the basis of their actual or imputed sexual or gender identity. In 2015, the Special Rapporteur was glad to participate in an exchange between mechanisms of the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the United Nations concerning the issue.[30] In 2016, the Human Rights Council established a new mandate on protection against violence and discrimination against persons on the basis of their sexual orientation or gender identity (Human Rights Council resolution 32/2). Once more this brings to the fore the norm that life may not be taken in order to impose ethical values — and that, where that is done, there should be accountability.

102. In a small yet significant number of cases, States arbitrarily apply the death penalty very directly on the basis of sexual orientation. At least 10 States have laws allowing for such death sentences, a clear violation of international law in that the death sentence is imposed for a crime that should not even be a crime, let alone one that meets the threshold of "most serious". Even if the law is not in fact being applied, it inevitably has a significant "chilling effect" on lesbian, gay, bisexual and transgender communities in those countries.

103. But a problem in a far larger number of States is that of the State's failure to protect persons from violence on the basis of their real or imputed sexual or gender identity. Such failure can manifest itself in many ways, for example the failure of law enforcement officials to protect participants of a "Pride" parade from violence at the hands of counter-demonstrators or, alternatively, a failure properly to investigate attacks or punish perpetrators, thus contributing to a climate of impunity.

104. Whether or not, as in the first of the above two examples, there is a police officer on the scene who fails to act, attention should also be paid to the "normative environment" in which such attacks take place. This is central to understanding trends in their incidence, as well as appreciating the role that the State could — should — be playing in their reduction.

5. Migrants

105. The right to life of migrants has also been an issue placed high on the global agenda since the beginning of 2015. Concerns about use of force at borders or in temporary holding facilities (sometimes by private security contractors) are one dimension of the issue, although the standards are no different than for any other context.[31]

106. Issues of other loss of life are more complex, and will surely demand the attention of the Council and the next mandate holder over the coming years. Instances where a deliberate policy has impeded the flow of refugees, particularly where it denies them asylum and places them at mortal risk, appear to amount to a violation (for example, where closing a border leads to an accumulation of

[30] See www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

[31] See, for example, "Asylum seekers abused in German shelter by security contractors", *Deutsche Welle*, 28 September 2014. Available from www.dw.com/en/asylum-seekers-abused-in-german-shelter-by-security-contractors/a-17960732.

internally displaced persons within a war zone that can then be targeted).[32] Equally important are questions about the responsibilities coastguard or other naval assets have to rescue migrants in distress on international waters.[33]

E. Use of statistics

107. In his report to the General Assembly in 2014 (A/69/265), the Special Rapporteur examined the role of statistics and the right to life. In that report, he highlighted the general reduction in the levels of homicide and other violent death around the world, but highlighted that certain regions and certain States continued to suffer from stubbornly high levels of violence.

108. The State has a responsibility to investigate all suspicious deaths and to pursue those responsible.[34] Documenting homicide statistics, and sharing those statistics with appropriate global monitoring bodies, represents an important dimension of accounting for life.

109. Reference was made above to the research conducted worldwide on violence reduction. In many cases this includes case studies aimed at determining the reasons why violence has reduced in a particular community during a specific period. This kind of research is vital to enable violence-stricken communities worldwide to analyse their own situations and to develop and implement measures to address the problem in their own specific contexts.

110. Continuing this research, especially in those areas of the world with the highest incidences of violence, including Latin America and Africa, should be a high priority for the scientific community, including local universities.[35] The duty to protect lives that lies with States, as well as the requirement of precaution, will require policymakers gradually to implement the findings of such research. Those monitoring the implementation of the right to life should engage with States that do not take measures to reduce violence. There should be active collaboration and interaction between those implementing Sustainable Development Goal 16 and those with responsibilities for the protection of the right to life.

F. Accountability and the role of investigations

111. The modern concept of human rights is premised on the approach that there are consequences for the violation of its norms — human rights standards are not merely preferences or aspirations. In line with this approach it has been a central tenet of the mandate that the protection of the right to life has two components: the prevention of arbitrary deprivations of life, and accountability should such

[32] See, for example, Gerry Simpson, "ISIS advance traps 165,000 Syrians at closed Turkish border", Human Rights Watch, 27 May 2016. Available from https://www.hrw.org/news/2016/05/27/dispatches-isis-advance-traps-165000-syrians-closed-turkish-border.

[33] See International Maritime Organization, Office of the United Nations High Commissioner for Refugees and the International Chamber of Shipping, *"Rescue at sea: a guide to principles and practice as applied to refugees and migrants"* (2015).

[34] European Court of Human Rights, *Opuz v. Turkey*, application No. 33401/02, judgement of 9 June 2009, para. 150.

[35] See, for example, the work of the *Observatorio de la Violencia* in Honduras, available from www.iudpas.org/observatorio.

deprivations occur. A lack of accountability is in itself a violation of the right to life. Accountability plays a central role in affirming the norm against arbitrary deprivations of life. It therefore also plays a vital preventive role. These two components thus create a self-reinforcing virtuous circle.

112. Accountability is a broad concept, which is not limited to the legal or other finding that a specific individual or institution is responsible for a particular instance of the taking of life, or to the sanctions imposed. Before such conclusions can be reached, an investigation into the events that transpired may be required. Investigations are thus an integral part of the concept of accountability.

1. Duty to investigate

113. The duty of the State to investigate is triggered where the State knows or should have known of any potentially unlawful death, including where reasonable allegations of a potentially unlawful death are made. The duty to investigate does not apply only where the State is in receipt of a formal complaint.[36]

114. The duty to investigate any potentially unlawful death includes all cases where the State has caused a death or where it is alleged or suspected that the State caused a death (for example, where law enforcement officers used force that may have contributed to the death). In all peacetime situations and all cases outside the conduct of hostilities during an armed conflict, this duty exists regardless of whether it is suspected or alleged that the death was unlawful.

115. The duty to investigate applies in relation to persons within the territory of a State or otherwise subject to its jurisdiction.[37] Where the duty to investigate applies, it applies to all States that may have contributed to the death or which have failed to protect the right to life.

116. The duty to investigate a potentially unlawful death applies generally during peacetime, situations of internal disturbances and tensions and armed conflict. Certain situations, such as armed conflict, may pose practical challenges for investigations.[38] Where context-specific constraints prevent full investigation, the constraints should be recorded and publicly explained.

117. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those responsible.[39] Where, during the conduct of hostilities, any casualties have resulted

[36] European Court of Human Rights, *Ergi v. Turkey*, application No. 66/1997/850/1057, judgement of 28 July 1998, para. 82, and *Isayeva, Yusopva and Bazayeva v. Russia*, application Nos. 57947/00, 57948/00 and 57949/00, (Chamber) judgment of 24 February 2005, paras. 208 and 209; Inter-American Court of Human Rights. *Montero-Aranguren* et al. *v. Venezuela*, judgement, 5 July 2006, para. 79.

[37] See Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 10; African Commission on Human and Peoples' Rights, general comment No. 3. See also European Court of Human Rights, *Hassan v. United Kingdom*, application No. 29750/09, (Grand Chamber) judgement of 16 September 2014, para. 78.

[38] See, for example, European Court of Human Rights, *Jaloud v. The Netherlands*, application No. 47708/08, (Grand Chamber) judgement of 20 November 2014, para. 164.

[39] For a discussion of the duty to investigate violations of international humanitarian law, see ICRC, customary international humanitarian law, rule 158 (Prosecution of war crimes). See also the Geneva Conventions of 1949: Geneva I, art. 49; Geneva II, art. 50; Geneva III, art. 129; Geneva IV, art. 146; the 1977 Additional Protocol I, art. 85.

from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. In any event, where evidence of unlawful conduct is identified, a full investigation should be conducted.

2. Deaths in custody

118. Where a State agent has caused the death of a detainee or where a person has died in custody, this must be reported, without delay, to a judicial or other competent authority that is independent of the prison administration and mandated to conduct prompt, impartial, and effective investigations into the circumstances and causes of such cases.[40] This responsibility extends to persons detained in prisons, in other places of detention (official or otherwise), and to persons in other facilities where the State exercises heightened control over their lives. Owing to the control exercised by the State over those it holds in custody, there is, in general, a presumption of State responsibility in such cases (see A/61/311, paras. 49-54). Particular circumstances in which the State will be held responsible for the death, unless it is proven to the contrary, include, for example, situations where the person suffered injury while in custody or when the deceased was, prior to his death, a political opponent of the Government or a human rights defender, was known to be suffering from mental health issues, or committed suicide in unexplained circumstances. In any event, the State has the obligation to provide all relevant documentation to the family of the deceased, including the death certificate, medical report and reports on the investigation held into the circumstances surrounding the death (see CCPR/C/OP/2 at 112 (1990), para. 9.2).

3. Minnesota Protocol

119. The intersection of the mandate of the Special Rapporteur and the process of investigations, including their forensic element, is made clear in one of the documents central to the mandate, the Minnesota Protocol, discussed above. This remains a groundbreaking piece of work with significant impact. However, extensive consultation revealed a consensus that the time is ripe for revision.[41] As a key text providing guidance on the practical implementation of the duty to protect life and the obligation to investigate potentially unlawful deaths, its updating will ensure its continuing relevance over the coming decades.

120. The process of revision, undertaken by the Special Rapporteur in collaboration with OHCHR, has been marked by open and extensive consultations with experts from all regions and with diverse backgrounds. In both its old and in its new form, the Minnesota Protocol is thus an expert document which depends for its authority on the use that States and others have made and will continue to make of it, and the expertise of those involved in the process of updating it, in addition to whatever other official endorsements it may receive. Although it is an expert document, a particular effort was made to receive and take account of comments from States, because of their close involvement in the issues at hand.

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[40] See the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 71 (1).

[41] This was also a fact identified by the Commission on Human Rights (resolutions 1998/36, 2000/32, 2003/33, and 2005/26) and later by the Human Rights Council (resolutions 10/26, and 15/5).

121. After incorporating a final round of comments, the revision was finalized on 31 July 2016.

G. Role of regional systems

122. International human rights law comprises the global (i.e. the United Nations) as well as the regional human rights systems. All the regional systems recognize the right to life, and in many cases are active participants in the ongoing development of the jurisprudence regarding this dynamic right. There is, however, scope for their increased involvement in ensuring its protection. The universality of human rights cannot mean only that all people from all parts of the world are held to the same standards; universality also requires that people from all parts of the world have a role to play in determining what those standards are in the first place. Regional systems play an important role in ensuring that the human rights project is not centrally driven from top down, but also allows for input from all corners of the globe.

123. It has been a high priority of the Rapporteur to collaborate with regional systems on issues related to the right to life. Establishing working relationships between United Nations experts, including those in OHCHR who work on the issue and those in regional systems who focus on the right to life, provides an opportunity for all sides to compare notes, to gain different perspectives on the relevant issues, and to ensure the coherence of the long-term development of the right. The regular meetings in Room XX with high-ranking representatives of regional systems have played an important role in establishing better working relations in general, but it may be time to move towards bringing together the experts in the various systems around particular rights, such as the right to life, on a regular basis.

V. Conclusion

124. **Given what is at stake, it comes as no surprise that the right to life has spawned a coherent and sophisticated set of principles and rules that underlie its protection. At the same time, it should be recognized that this body of law is deeply affected by the prevailing mores, which to some degree change over time, and in some cases differ between cultures. Moreover, new situations arise which challenge established convention. As a result, constant engagement with the application and scope of this foundational right is required, not least from the holder of the mandate on extrajudicial executions.**

125. **Clearly a continuing focus on the relationship between technology in all its forms — weapons (perhaps also cyberweapons) and information technology — and the right to life will be required. The benefits and risks of less-lethal weapons belong to the same category. Vulnerable groups in all their manifestations will require special attention. Patterns of discrimination in the use of force by law enforcement officials could usefully be the subject of a study. The process of ensuring the progressive abolition of the death penalty will warrant close attention and guidance. The impact of terrorism on the right to life remains a concern: on the one hand because of overreaction by States in many cases, but on the other hand because terrorists themselves pose serious**

threats to the right to life. The use of force by non-state actors, and accountability for its abuse, has been largely underexplored.

126. **Accountability for violations of the right to life will be of ongoing importance. The new Minnesota Protocol — an overview of the entirety of the second component of the right to life — provides a platform from which to lift that aspect of the protection of the right to life to a new level. This will require it to be made accessible and known to the full range of those engaged in investigations — from police officers to forensic pathologists to lawyers, non-governmental organizations and others.**